

AMENDED UPDATED INFORMATIVE DIGEST
for
PROPOSALS TO AMEND REGULATIONS WITHIN
SUBCHAPTER 3, ARTICLE 6, AND SUBCHAPTER 4 OF
CHAPTER 8, TITLE 8, CALIFORNIA CODE OF
REGULATIONS, SECTIONS 16404 THROUGH 16439.

*This Amended Updated Informative Digest replaces the previous Updated Informative Digest of July 23, 2008, that was included as item 50 of the rulemaking record.

Statutory Changes:

There have been no statutory changes directly affecting the subject matter of these proposals since the preparation of the Notice of Proposed Rulemaking that was published on November 30, 2007.

Further Revisions to Amendments since the Notice of Proposed Rulemaking:

The Director has made the following substantive changes to the regulations originally proposed in the Notice of Proposed Rulemaking:

Section 16404. Use of Electronic Reporting Forms.

In subpart (e), the words “submit or” have been inserted before the word “receive” to indicate that the limitations expressed in that subpart apply both to the sending and receiving of electronic payroll records.

Section 16422. Applicable Dates for Enforcement of Labor Compliance Program.

In subpart (g)(1), the language was revised to delete the reference to Appendix B and replace it with a reference to statutes that require a labor compliance program “that contains or meets the requirements of Labor Code Section 1771.5.” The new language incorporates the customary statutory designation for mandated labor compliance programs that are subject to these regulations.

Section 16423. Approved Labor Compliance Program Required by Statute.

The new proposed Appendix B that followed this section was deleted and replaced by a new subpart (f), which specifies that a list of the statutes requiring awarding bodies to have a labor compliance program will be maintained on the Department of Industrial Relations’ website. This subpart effectively replaces some of the original language of subpart (a), which listed four sets of bond statutes that are subject to a labor compliance program requirement but failed to list several other statutes that also contain such a requirement.

Section 16425. Approval of Awarding Body's Labor Compliance Program.

Subpart (c) was further revised to clarify that the Director may impose conditions on a program's approval based on the same factors used to evaluate a program's application. Also, a new subpart (f) was added to enable labor compliance programs with initial approval status under the existing regulations to convert to approval status without an expiration date and subject to revocation only for cause by meeting specified requirements. Specifically, the program's annual reports would have to be up-to-date and accurate; the program would have to show that it continues to employ experienced and trained personnel and has competent legal support; the program would have to update its manuals and procedures to comply with changes in the law since the program was first approved, including changes resulting from these regulatory amendments; and the program would have to be in compliance with any specific conditions placed on its approval by the Director.

Section 16426. Approval of Third Party Labor Compliance Program.

Subpart (c) was further revised to clarify that the Director may impose conditions on a program's approval based on the same factors used to evaluate its application. Also, a new subpart (f) was added to enable labor compliance programs with initial approval status under the existing regulations to convert to unrestricted approval status without an expiration date and subject to revocation only for cause by meeting specified requirements. Specifically, the program's annual reports would have to be up-to-date and accurate; the program would have to show that it continues to employ experienced and trained personnel and has competent legal support; the program would have to update its manuals and procedures to comply with changes in the law since the program was first approved, including changes resulting from these regulatory amendments; and the program would have to be in compliance with any specific conditions placed on its approval by the Director.

Section 16428. Revocation of Approval.

Subpart (f) was further revised to clarify that the Director may impose restriction or conditions on a program's approval status.

Section 16431. Annual Report.

The Director selected the Option B proposal for amending this section, which will require a prescribed reporting format for all labor compliance programs, with the exception of programs with extended authority with whom the Director has agreed to accept reports in a different format.

Section 16432. Investigation Methods for Labor Compliance Programs – Definitions and Minimum Requirements, Including Review, Confirmation and Audits of Payroll Records; On-Site Visits; and Early Resolution of Audits.

The Director selected the Option B proposal for amending this section, which will do the following: (1) require all certified payroll records to be reviewed within 30 days of re-

ceipts; (2) require random confirmation of payroll records at least monthly; (3) require weekly site visits of public works projects; (4) require preparation of an audit according to prescribed standards whenever a program determines that there has been a violation resulting in the underpayment of prevailing wages; (5) require the labor compliance program to give contractors an opportunity to submit exculpatory information before requesting the Labor Commissioner to approve the program's determination; and (6) authorize the program to resolve certain violations without seeking the Labor Commissioner's approval, subject to a further requirement to document the violation and resolution. The process of "confirmation" described in subpart (c) was further revised to clarify that it requires random rather than blanket confirmation of payroll records. Subpart (f) also was further revised by changing the word "may" to "shall" so that the duty to notify contractors of their right to submit exculpatory information will be mandatory rather than permissive, and the language was clarified to indicate that the contractors are entitled to a minimum of ten days within which to submit exculpatory information for consideration by the labor compliance program.

Section 16434. Duties of Labor Compliance Program.

The Director selected the Option B proposal for amending this section, which will do the following: (1) require labor compliance programs to follow prescribed standards for processing complaints; (2) set forth the duties of labor compliance programs with respect to apprentices; (3) require programs to maintain records demonstrating reasonable and sufficient enforcement efforts for each project monitored by the program, and requiring compliance records to be retained for prescribed periods of time; and (4) authorizing the Labor Commissioner to provide, sponsor, or endorse training of prevailing wage enforcement, covering but not limited to certain prescribed subjects. Subpart (a) was further revised to include a statement on the Labor Commissioner's practice of using attorneys in enforcement cases. The language of subpart (c)(2)(D) also was revised further to clarify enforcement policies with respect to workers who are not duly registered as apprentices and to contractors who exceed the maximum ratios for use of apprentices.

Section 16437. Determination of Amount of Forfeiture by the Labor Commissioner.

The Director selected the Option B language for subpart (a)(4) to conform to the revisions in section 16432 and also added a new optional Request for Approval of Forfeiture form as a new Appendix D following this section.